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UNCLAS SECTION 01 OF 05 MADRID 001764

SIPDIS

STATE FOR CA/VO/F/P

E.O. 12958: N/A

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SUBJECT: VISA WAIVER PROGRAM COUNTRY REVIEWS: SPAIN

REF: A) STATE 92156; B) STATE 102840

1) SUMMARY: POST SENT A FORMAL REQUEST FOR INFORMATION TO THE MINISTRY OF FOREIGN AFFAIRS ON APRIL 29, 2004 IN THE FORM OF A NOTA VERBAL. TO DATE WE HAVE NOT RECEIVED A FORMAL RESPONSE TO OUR NOTE; HOWEVER, WE HAVE EVERY REASON TO BELIEVE THE SPANISH GOVERNMENT IS TAKING THE REVIEW SERIOUSLY AND WE DO EXPECT TO RECEIVE A SUBSTANTIVE RESPONSE IN THE NEXT WEEK OR TWO. ELECTIONS OF MARCH 14, 2004 RESULTED IN A CHANGE OF GOVERNMENT FOR SPAIN, AND TRANSITION TO THE NEW ADMINISTRATION IS STILL IN PROCESS. THE NEW ADMINISTRATION IS STILL NAMING THE NEW OFFICERS FOR KEY POSITIONS IN ALL PARTS OF THE GOVERNMENT, WITH THE DIRECTOR GENERAL FOR CONSULAR AFFAIRS BEING NAMED ON FRIDAY MAY 7, 2004. THIS REORGANIZATION OF GOVERNMENT MINISTRIES HAS CREATED DELAYS IN THE NORMAL PROCESSING OF REQUESTS. THE CHARGE RAISED THE ISSUE WITH THE NEWLY APPOINTED NUMBER TWO AT THE MINISTRY OF FOREIGN AFFAIRS, WHO ASSURED HIM THAT THEY APPRECIATED THE IMPORTANCE OF THE ISSUE AND THAT THEY WOULD RESPOND SOON. THE INFORMATION PROVIDED BELOW HAS BEEN ASSEMBLED BY THE MISSION IN MADRID AND WILL BE SUPPLEMENTED BY DOCUMENTS BEING SENT BY EXPRESS MAIL. FURTHER DETAILED INFORMATION FROM SPANISH GOVERNMENT SOURCES WILL BE FORWARDED AS IT IS RECEIVED. POST IS ANTICIPATING THE ARRIVAL OF THE IWG TEAM IN SPAIN THE LAST WEEK OF JUNE (JUNE 28-JULY 2). END SUMMARY

2. Documents are being sent via DHL to Scott Cecil in CA/VO/F/P, tel. 202-663-1251. Alternate point of contact is Debbie Lopes da Rosa, also in CA/VO/F/P, tel. 202-663-1173. Fax for both is 202-663-3897. Documents being sent are in Spanish and many can be downloaded directly from the Internet at the locations cited below. Translation assistance may be needed from Language Services.

3. As part of the information gathering phase, the IWG formulated a comprehensive list of questions, some of which can only be answered with certainty by the host country. Those questions are below. Post may have some of the information requested, and the IWG would be grateful for input post would have; however, given the time constraints, we request posts to pose the following questions to appropriate host country officials for complete answers. Some of these questions seem at first glance to have little to do with immigration; they are intended to help the IWG form a basis for evaluating the country's level of law enforcement cooperation. Please share this fact with countries, which may raise doubts about the content of some of the following questions. The extent of the information we gather in advance will determine the agenda of the reviewing team during the in-country visit. The more information we have up front, the less the team will have to do on the ground. We therefore request posts to submit the following questions as soon as possible:

4. Since January 1994, how many blank national passports have been reported as lost, stolen, missing, or otherwise unaccounted for worldwide? If possible, please provide a complete list of these passport numbers.

Number of lost blank passports since 1994 - approximately 1000. We have been informed by Spanish authorities that lost/stolen blank passports are reported to the DHS (legacy INS) office in Madrid.

5. In 2003, how many lawfully issued national passports were reported stolen, lost, missing, or otherwise unaccounted for worldwide?

Reported Lost/stolen or misplaced in 2003 - 14,448.

6. Is the government required to check a person's fingerprints against a database before granting permanent residence status?

All Spanish citizens and all foreign legal residents of Spain are documented with identity cards linked to a central database with fingerprint data (right index

finger). This data is checked against a national and EU/Schengen database.

Ministerio del Interior: Extranjera e Inmigracin (www.) [Spanish, English, French] This site describes all the paperwork needed for residency.

All non-EU citizens wanting to stay in Spain for more than 30 days need a visa from the Spanish Embassy or Consulate closest to their place of residence outside of Spain. When they arrive in Spain, they must apply for residency. Getting residency in Spain allows you to live anywhere in the EC. Likewise, getting residency somewhere else in the EC gives you a right to residency in Spain.

The various visas you can obtain are described in these Spanish Consulate of New York links: Student Visas; Tourist and Business Visas; and Residence Visas. The Spanish Consulate in New York lists the requirements for each of the six types of residence visas/work permits.

If you're married or related to a Spanish citizen, you apply for the Visa de Reagrupacion Familiar (Family Unification).

If you're retired, you apply for the Visa de Jubilados (Retiree). Note: on arrival in Spain, you may be asked to prove you have medical insurance.

If you're wealthy, apply for visas #4 or #5.

If you're a Mormon, apply for visa #6.

After arriving with the residence visa in their passports, non-EU citizens have three months after arrival in Spain to go to the nearest Oficina de Extranjeros (Foreigners Office). Below are the following documents generally required.

Form called Solicitud de Tarjeta en Regimen Comunitario

Passport and 2 photocopies

3 passport-sized photos

Medical certificate

If a member of the family is Spanish (or has residency): your Libro de Familia (Family Book), DNI (National Identity Card or Legal Residency Card) of that family member, Empadronamiento, and medical insurance.

If you will be working for someone: a contract of employment.

If you will be self-employed: documents that prove you fulfill the requirements necessary to undertake that activity.

If you won't be working: documents that prove you have enough money to live during your time in Spain, plus medical insurance.

If you will be a student: proof of matriculation in an accredited school, plus the requirements of the previous item.

The Resident Card is issued after adjudication of the application. Each Oficina de Extranjeros (Foreigners Office) processes candidates locally and the time spent both waiting in line at the office and waiting for your Resident Card can vary tremendously, depending on where you do it. Your photo and fingerprint will be taken and maintained in a central database held by the Spanish National Police (SNP), a sub-section of the Ministry of Interior (MOI).

ID Numbers in Spain

NIE (Numero de Identidad de Extranjero - Alien ID number): The immigration service (SNP) issues this number upon obtaining residency (the number is on the Resident Card). This is the identification number in Spain. It is needed in order to file taxes, establish a business, open a bank account, and for almost all other forms. Both EU citizens and non-EU citizens get issued a NIE.

DNI (Documento Nacional de Identidad): This is the ID number for Spanish citizens. The same number is used for one's driver's license and it linked to the "Family Book" (Libro de la Familia), which lists births, deaths and marriages.

NIF (Numero de Identificacin Fiscal): This is the tax ID number for all individuals. For Spaniards, it's the DNI plus one letter; for foreigners, it's the same number as your NIE. With a NIE, there is no need to re-apply for a NIF. If you're a nonresident who has to pay taxes in Spain, a NIF is issued without having a NIE.

CIF (Certificado de Identificacin Fiscal): This is the same as the NIF, but for companies.

Social Security Number: The employer applies for this number when you start your first job in Spain. This number then stays with you for all subsequent jobs. If you are self-employed, you apply yourself for this number.

14. Is the government required to check a person's fingerprints against a database before granting naturalization?

All legal residents of Spain are documented with fingerprint data prior to being eligible to apply for naturalization. Among the documents to be presented are certificates of prior criminal records or absence of these from all countries of prior residence including Spain. Police Security checks are mandatory before granting Spanish nationality.

15. Please provide information, including if practicable a copy of pertinent laws, that describe all the circumstances (and qualifications) in which a person might naturalize and/or obtain citizenship in the country. Have any nationality and citizenship laws changed since the country was admitted to VWP, particularly those that relate to the circumstances in which people born outside the country may acquire or may have acquired citizenship in the country?

Spanish nationality law was amended on October 8, 2002 by Law 36/2002, modifying the civil code on nationality issues.

The law provided benefits to recover nationality for those who had lost it and to facilitate access to Spanish nationality for relatives of Spanish citizens, expanding the acquisition through family relationships to include grandchildren of Spanish citizens born outside of Spain. Reciprocity with a number of South American countries has resulted in a number of people acquiring Spanish nationality while still being able to retain their other nationality.

Legislation being pouched (Appendix F) and available on-line at:
http://www.justicia.es/servlet/Satellite?cit=105821035243&pagename=Portal_del_ciudad

16. Provide the number of applications for naturalization approved, denied and pending, each year since 2001, breaking down the denials by grounds for denial and the number denied under each ground. (Examples of grounds could include, but are not limited to, failure to meet host country's residency or language requirements, terrorism, various law enforcement concerns, etc.).

Unknown - Cons has requested the information from MFA and from Spanish National Police Documents Unit.

17. Under what circumstances may a passport be revoked? Can convicted felons obtain passports? If so, are the passports annotated in a way that would indicate that the bearer has a criminal conviction?

Art. 25 of the Spanish civil code establishes the following grounds to lose Spanish nationality by naturalized citizens:

- a. Those who, for a period exceeding three years, exclusively use the nationality renounced when acquiring the Spanish nationality.
- b. Those who voluntarily joined the armed services or assume a political position in a foreign country against the specific prohibition of the Spanish government.
- c. Those who are convicted of forgery, omission or fraud in the acquisition of the Spanish nationality will have their acquisition of Spanish nationality nullified, although this will not affect bonafide third parties. The Prosecutor must initiate the revocation process within 15 years.

Citizenship retention of expatriate Spaniards requires maintaining registration with the Spanish Embassy or Consulate in the country of residence.

18. Please list the names of major organized crime groups operating in the country.

Organized crime groups from many countries have footholds in Spain. For example, English, Russian, Ukrainian, Israeli, Italian Mafia, and Colombian crime groups are known to have members living in Spain. These groups do not always have clearly defined names but include: East Europeans (Slavic and Romanians); Chinese (mostly PRC, as opposed to Taiwanese); North Africans (Moroccans and Tunisians; some Algerians); South Americans (Ecuadorians and Colombians); Sub-Saharan Africans (primarily West Africans, e.g., Nigeria and Ghana); Cubans (less than in past years; mostly but not exclusively surrounding the Canaries). We've also heard that there are some areas that have been heavily infiltrated by Russian / Former Soviet Union organized crime groups.

¶9. If available, please provide a brochure or pamphlet describing each type of national passport that remains valid for travel.

Brochures not available. We have produced a summary of information regarding documents provided to the DHS forensic document lab and to the Department of State Office of Fraud Prevention at CA/FPP. This information is being pouched (Appendix B) and provided via email to CA/VO.

¶10. If available, please provide a copy of the country's most recent annual Uniform Crime Report. If your country does not produce a Uniform Crime Report or something similar, or if the following information is not included in the report, please ask the country to provide: the number of people convicted of a crime currently in prison; the number of those in prison who are nationals of the host country; the rules that apply to foreigners convicted of a crime being deported in lieu of serving sentences; the numbers of foreigners convicted of a crime deported since 2001 in lieu of serving a sentence; the degree of centralization of the country's law enforcement records if the country has a federal system, and the extent that lack of such centralization could affect these requested statistics.

RSO produced memo regarding Crime and Spain also being pouched (Appendix C). Copy of RSO cable (03 State 003091): Analysis and Trends of Crime in Spain, is being pouched (Appendix D).

Uniform Crime Report not available, but a hard copy of a report from the Ministry of Interior is functionally similar. Hard copy is being pouched (Appendix E), and it is available on the Internet at <http://www.mir.es/oris/index.htm>

¶11. The IWG will be formulating assessments of the level of law enforcement cooperation between the host government and the U.S. and the level of law enforcement within the country; any information or assessment the Embassy can provide at this time on either will be useful.

The Consular Section is directly involved in all formal Mutual Legal Assistance Treaty Requests (MLAT) and Extradition requests made by the US to Spain. The Spanish requests to the US are handled by the Spanish Embassy in Washington, which presents them to the Department of State and Department of Justice. In FY 2002, the Embassy handled 183 MLAT requests and 43 extradition requests. In FY 2003, the Embassy handled 165 MLAT requests and 50 extradition requests. Many of these requests involved requests for sharing of information regarding major crime, drug, fraud, and terrorist investigations. Both countries are interested in sharing information and there is active judicial cooperation between Spain and the US. Some information requested cannot be provided due to national security issues or due to the format of information or specificity of the request itself. A very few extradition requests have not been honored due to sentencing guidelines and restrictions intrinsic in the treaties and national laws.

¶12. Please provide a copy of the law or regulation, if any, which authorizes the country's Government to provide the USG with a certified copy of a criminal judgment and/or criminal history record of a national of the country. Assume that the information would be used in an official immigration investigation (a non-criminal investigation to determine whether a non-U.S. citizen should be prevented from entering the United States or deported from the United States). Assume also that this request would be made through INTERPOL channels rather than through a formal Mutual Legal Assistance Treaty (MLAT) request. (Consular sections may have this in relation to judicial requests for assistance.)

Copy of the Legislation regarding international cooperation in law enforcement matters is being pouched (Appendix F).

It is available on the Internet at <http://www.igsap.map.es/cia/dispo/25726.htm>

¶13. The information below is requested in order to assist in evaluating U.S. law enforcement and security interests in VWP countries, as required by Visa Waiver Program legislation. The information is needed in order to assist the Department of Justice in obtaining a complete picture of law enforcement procedures in the VWP countries and how those procedures might affect joint investigations and other law enforcement

cooperation.

13a. Provide a summary of how the country's police may use informants, including any restrictions or prohibitions on use of informants. If practical, provide a copy of pertinent statute, case law, or regulation.

Use of informants is similar to that in the US. Legislation relating to that is included in Appendix F or available on the Internet at <http://www.igsap.map.es/cia/dispo/25726.htm>

13b. Provide a summary of legislation and regulations regarding the types of investigative techniques the country's police can use in conducting undercover investigations including any restrictions on such activities, such as restrictions on the use of subterfuge or on how police officers may represent themselves to the targets. If practical, provide a copy of pertinent statute, case law, or regulation.

Legislation Attached and available on line at:
[http://www.igsap, map.es/cia/dispo25726.htm](http://www.igsap.map.es/cia/dispo25726.htm)

MANZANARES